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Department of Water Resources

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Attorneys for City of Pocatello

**BEFORE THE DIRECTOR
OF THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE REQUEST FOR)
ADMINISTRATION IN WATER DISTRICT 120)
AND THE REQUEST FOR DELIVERY OF WATER)
TO SENIOR SURFACE WATER RIGHTS BY)
A&B IRRIGATION DISTRICT,)
AMERICAN FALLS RESERVOIR DISTRICT #2,)
BURLEY IRRIGATION DISTRICT,)
MILNER IRRIGATION DISTRICT,)
MINIDOKA IRRIGATION DISTRICT,)
NORTH SIDE CANAL COMPANY, AND)
TWIN FALLS CANAL COMPANY)
_____)

**PETITION FOR
RECONSIDERATION BY
THE CITY OF
POCATELLO**

The City of Pocatello (“Pocatello” or “City”) respectfully requests the Idaho Department of Water Resources (“IDWR” or “Department”) to reconsider the Department’s Order issued by its Director, Karl J. Dreher, (“Director”) on May 2, 2005 (the “May 2 Order”) and the curtailment order issued by Lewis Rounds, as Watermaster for Water District 120, on April 22, 2005 (“Curtailment Order”). The Curtailment Order is based upon the Director’s Order of April 19, 2005, which was amended and superseded by the May 2 Order.

This Petition is brought pursuant to Rule 740(02)(a) of the Rules of Procedure of the Department of Water Resources and the terms of the May 2 Order. Pocatello is a “party”; the Director granted Pocatello’s Petition to Intervene by an Order dated May 11, 2005. Pocatello is also aggrieved because of the threatened curtailment of its Biosolids Well and potentially other wells that it owns and operates. Pocatello’s Well associated with Water Right No. 29-7771 (the “Biosolids Well”) is located in Water District 120 and appears to be a subject of the Curtailment Order. Pocatello’s Biosolids Well is used in the City’s wastewater treatment program, pursuant to the requirements of the City’s Biosolids Management Plan and of an NPDES permit. These set out detailed requirements for the land application and treatment of the biosolids. Water from the Biosolids Well is required for the operation of the City’s biosolids program. If the Biosolids Well cannot be used, the operation of the City’s biosolids program will be seriously impaired.

Under the terms of the May 2 Order and of the Curtailment Order, Pocatello would be required to cease use of the Biosolids Well unless the Department approves a “mitigation plan” under which Pocatello would be required to provide water to the Snake River. Although Pocatello tendered such a plan as a member of the “Water Resources Coalition”, the Director has declined to allow Pocatello to provide mitigation water for the Biosolids Well, except through a ground water district, and has refused to allow Pocatello to provide mitigation water through its

proposed non-use of another water right. *See* Order Regarding Water Coalition Replacement Plan issued by the Director on May 6, 2005.

Pocatello requests the Director to reconsider all aspects of the May 2 Order and to rescind the Curtailment Order, insofar as either of these applies to Pocatello, because they fail to recognize the senior priority of Pocatello's Biosolids Well, which has claimed an 1867 priority date in the SRBA, Subcase No. 29-11609. Pocatello requests the Director to rule that the Curtailment Order does not apply to the Biosolids Well because of its seniority or, in the alternative, to stay the effect of the Curtailment Order until the priority of the Biosolids Well has been determined as a result of its adjudication.

Pocatello requests the Director to reconsider all aspects of the May 2 Order and to rescind the Curtailment Order because these were entered without notice to Pocatello and without an evidentiary hearing. The entry of orders affecting Pocatello's property rights without notice and a prior evidentiary hearing are a violation of due process. Pocatello requests the Director to withdraw the May 2 Order and the Curtailment Order and to hold an adequate evidentiary hearing before acting on the delivery call placed by the Surface Water Coalition.

Pocatello requests the Director to reconsider all aspects of the May 2 Order and to rescind the Curtailment Order because these were entered without record support for the actions. Without limiting the generality of that statement, Pocatello requests the Director to take evidence upon those matters that he is required to consider, but did not address in entering the May 2 Order. For example, the Director did not address the requirement of Idaho law that a senior appropriator must make reasonable use of their water.

Pocatello requests the Director to reconsider all aspects of the May 2 Order and to rescind the Curtailment Order and to hold an evidentiary hearing that provides a full record of consideration of matters required by the Conjunctive Management Rules to be addressed. The

May 2 Order, by its terms, shows that the Director did not consider, or did not consider adequately, all matters that the Conjunctive Management Rules require him to address.

For example, Rule 20 of the Conjunctive Management Rules sets forth statements of purpose and policies for conjunctive management of surface and ground water resources. Among other things, the rules require the consideration of priority, reasonable use, optimum development of water resources in the public interest, full economic development and the principle of futile calls.

Rule 40 of the Conjunctive Management Rules specifies how the Director is to respond to a delivery call. Among other things, Rule 40.03 provides: "In determining whether diversion and use of water will be regulated ..., the Director shall consider whether the petitioner making the delivery call is suffering material injury to a senior-priority water right and is diverting and using water efficiently and without waste, and in a manner consistent with the goal of reasonable use of surface and ground waters as described in Rule 42."

Rule 42 of the Conjunctive Management Rules, to which reference is made in Rule 40, specifies factors that the Director is to "consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste" These factors include, among others, the following considerations with respect to the calling water rights:

- d. If for irrigation, the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application.

....

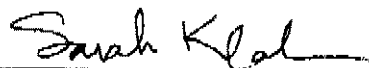
- g. The extent to which the requirements of the holder of a senior priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conservation practices;"
- h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells
...."

In failing to address all matters he was required to address before entering the May 2 Order and approving the Curtailment Order, the Director has violated substantial rights of Pocatello.

Respectfully submitted this 16th day of May 2005.



Josephine P. Beeman



Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May 2005, I caused to be served copies of the foregoing PETITION FOR RECONSIDERATION BY THE CITY OF POCA TELLO upon the following, by U. S. Mail, postage prepaid:

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